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**Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Anti-Dumping & Allied Duties  
\*\*\*\*\***

New Delhi, the 4th October 2008

**FINAL FINDINGS**

**Sunset Review**

**Sub: Sunset Review (2) of anti-dumping duty imposed on imports of Acrylonitrile Butadiene Rubber (NBR) originating in/exported from Germany and Korea RP.**

**No. 15/6/2007-DGAD** - Having regard to the Customs Tariff Act, 1975 as amended in 1995 (herein after also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules (hereinafter also referred as Rules), 1995, thereof;

**A. BACKGROUND**

2. WHEREAS, having regard to above Rules, the Designated Authority (hereinafter referred to as the Authority) conducted a sunset review of the antidumping duty in force against import of Acrylonitrile Butadiene Rubber (NBR) (hereinafter referred to as subject product/goods) into India from Korea RP and Germany (hereinafter referred to as subject countries), vide initiation notification dated 1<sup>st</sup> Oct. 2001 on the basis of an application filed by the M/s Apar Industries Ltd, Mumbai, the domestic producer in India.

3. AND WHEREAS, vide Notification No. 50/1/2001 dated 21<sup>st</sup> September 2002, the Authority, concluded that the cessation of antidumping duty on NBR from Korea RP and Germany will lead to continuation or recurrence of dumping and injury and recommended continued imposition of definitive antidumping duty on imports of the subject goods. Definitive antidumping duty was imposed on the subject goods vide Customs Notification No. 111/2002-Customs dated 10<sup>th</sup> October 2002, (superseded by Notifications No. 78/2005- Customs of 1<sup>st</sup> Sept 2005 and No. 11/2007-Customs of 31<sup>st</sup> January 2007), for a further period of 5 years from the date of this notification.

4. WHEREAS on the basis of a duly substantiated application filed by M/s. Apar Industries Ltd, Mumbai, the Authority initiated the second sunset review of the anti dumping duty on imports of the subject product originating from the subject countries vide notification dated 8<sup>th</sup> October 2007 under section 9A (5) of the Act, to examine

whether the expiry of the duty would lead to continuation or recurrence of dumping and injury.

5. AND WHEREAS, vide Notification No: 109/2007- Customs dated 9<sup>th</sup> October 2007, the definitive duties were extended by the Central Government under Section 9A (5) for a period of one year up to 9<sup>th</sup> October 2008.

**B. PROCEDURE**

6. The procedure described below has been followed with regard to this investigation:

- i. After initiation of the review, the Authority sent questionnaires, along-with the initiation notification, to all known exporters/producers in the subject countries, and domestic industry in India in accordance with the Rule 6(4), to elicit relevant information;
- ii. The Embassies / Representatives of the subject countries in New Delhi were informed about the initiation of the investigation, in accordance with Rule 6(2), with a request to advise the exporters/producers in their respective countries to respond to the questionnaire within the prescribed time;
- iii. Questionnaires were sent to known importers and consumers of subject goods in India calling for necessary information in accordance with Rule 6(4);
- iv. Investigation was carried out for the period starting from 01.04.2006 to 31.03.2007 (POI). However, injury examination was conducted for a period from 2003-04 to the POI (inclusive);
- v. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations;
- vi. Response to the initiation notification was received from two exporters from Korea RP, viz.,
  - a) Korea Kumho Petrochemicals Co: Ltd (hereinafter referred to as KKPC);
  - b) LG Chem Ltd (hereinafter referred to as LGC or LG).

There was no response from any German exporter;

- vii. All India Rubber Industries Association (hereinafter referred to as AIRIA) and All India Federation of Footwear Manufacturers also filed their responses to the initiation notification as interested parties;
- viii. The Authority has considered all views expressed and submissions made by various interested parties to the extent they are relevant for the present investigation;

- ix. The Authority verified the information furnished by the domestic industry to the extent possible to examine the injury suffered and to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry;
- x. The Authority held a public hearing on 17.06.2008 to hear the interested parties orally, which hearing was attended by representatives of the domestic industry, exporters of the subject goods from the subject countries and other interested parties. The parties attending the public hearing were requested to file written submissions of views expressed orally. The written submissions received from interested parties have been considered by Designated Authority in this finding;
- xi. The essential facts of the case were disclosed to all interested parties in the form of confidential and general disclosures. Comments of the interested parties on the disclosure statement, to the extent they are relevant and supported by evidence, have been considered by the Authority;
- xii. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties. \*\*\*\* in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits.

**C. PRODUCT UNDER CONSIDERATION AND “LIKE” ARTICLE..**

7. The product involved in the said original investigation was Acrylonitrile Butadiene Rubber (NBR) also known as Nitrile Rubber falling under heading No. 40025900 in Chapter 40 of the First Schedule to the said Customs Tariff Act and ITC HS Classification. NBR is used in the manufacture of various rubber articles where resistance to oil, abrasion and heat applications are involved, such as oil seals, hoses, automotive products, gaskets, rice de-husking rolls, printers, fabrics, oilfield products, etc. The major raw materials required for NBR are Acrylonitrile and Butadiene. Different grades of NBR are defined in terms of mooney viscosity and acrylonitrile content. However, though there are several grades, the Authority had noted in the original investigation that it would not be appropriate to exclude any grade from the scope of the investigation. This being a sunset review investigation, the scope of the investigation is limited to the product already identified in the original investigation. This classification is however, indicative only and in no way binding on the scope of the present investigation. No interested party has extended any argument in the current investigation on the issue of the product under consideration and like article. The subject goods produced by domestic industry are used interchangeably with those imported from the subject countries, Therefore, the Authority holds that the subject goods produced by the domestic industry is “like article” within the meaning of the Rules.

#### **D. STANDING OF THE DOMESTIC INDUSTRY**

8. The sunset review has been initiated on the basis of a duly substantiated request submitted by M/s. Apar Industries Ltd, Mumbai, the sole domestic producer of the like article, on behalf of the domestic industry. At the time of filing for review, the production facilities were owned by Apar Industries. In February 2008, M/s Eliokem India Pvt. Ltd. (hereinafter referred to as EIPL) acquired the Synthetic Rubber Plants Polymer unit of Apar Industries by purchase of the production facilities on a going concern basis and assumed responsible for management of production and sale of NBR produced therein.

#### **E. VIEWS OF INTERESTED PARTIES**

##### **a) On initiation**

9. The domestic industry has claimed that they constitute domestic industry within the meaning of the Rules even if the production facility owned by Apar Industries at the time of filing for review has been acquired by EIPL w.e.f. Feb 2008. KKPC has opined that the acquisition required detailed examination by the Authority and appeared to have been made for leveraging the benefits of anti-dumping duty existing for all NBR supply sources to India. Further, that the high valuation for the NBR business has raised doubts about the veracity of injury claims made by Apar - Eliokem in the sunset review and EIPL should furnish details of valuation, due diligence report, documents filed with SEBI, sale- purchase agreement and any other document relating to the acquisition for examination by the Authority. The domestic industry has contended that acquisitions and mergers are based on the business plans of the acquiring company and have nothing to do with antidumping investigation, which relate to factual information prevailing during the POI. If NBR operations had been profitable, the polymer units would not have been sold by Apar Industries.

10. KKPC has further stated that the injury parameters of the NBR segment of Apar Industries would not hold good for EIPL which was not in existence during the POI of the review. As a new entity came into being using the assets of the old one, the injury parameters of the old entity could not be adopted for the new. Hence, the current review investigation is required to be terminated. Besides, as Apar's petition on which the review was initiated has become infructuous upon sale of assets, the review cannot be continued on a non-existing petition. AIRIA took the view that the review petition was originally filed by Apar Industries, who was no longer the beneficiary and hence the review may be closed and duty withdrawn. The domestic industry has responded that under the Rules, injury was to be analysed for the subject product, not the whole company and for the injury period. Since consequent to EIPL's acquisition of Apar Industries polymer unit, all assets, liabilities, rights, contracts and records has also been adopted by EIPL, the injury parameters relating to NBR would also apply. Further, an investigation once initiated can only be terminated under Rule 14 of the AD Rules only if

the Authority received such a request from the domestic industry or was convinced of the absence of evidence of dumping and injury to justify its continuation or the margin of dumping was less than 2% of the export price or the volume of dumped imports from subject countries accounted individually for less than 3% of the imports of the product.

**b) On confidentiality**

11. The domestic industry has submitted that the two Korean exporters have provided only selective extracts from the annual reports and has not provided certain appendices on indexed basis. In response, both KKPC and LGC have argued that the domestic industry should first provide a proper non-confidential version of the petition for comments. Since the industry had claimed excessive confidentiality, they could not raise this issue. The appendices mentioned by the domestic industry relate to costing information of the companies, regarding which the domestic industry itself has not filed the non-confidential version of its own costing information. All rules and procedures should apply uniformly to all the parties to the investigation, not just to the exporter. KKPC has stated that they have provided all the publicly available information regarding annual accounts, and did not furnish only the detailed financial statements which were not in public domain.

**c) On fixation of duty**

12. The domestic industry has submitted that both KKPC as producer-exporter and KKPC as producer in combination with any other exporter attract the same rate of duty, which was incorrect as KKPC with any other exporter should attract the residual rate of duty. However, KKPC has argued that (i) the dumping margin was calculated at the ex-factory level and all transactions to India, whether directly or through any other party, were taken into consideration, so that the rate determined for KKPC should apply to all its transactions, as per the practice of the U.S. Department of Commerce. (ii) As KKPC was aware at the time of sale that the goods are meant for export to India as they move directly to India and only the invoice is raised on the trader, the selling prices represent the export price to India. Hence, KKPC's rate should be applied irrespective of the trader involved.

**d) On import statistics**

13. KKPC has desired that DGCI&S transaction-wise import data may be placed in the public file. In response, the domestic industry has stated that they had no objection, if the Authority wanted to place such data in the public domain and DGCI&S had no reservations, but there was no reason why the exporter should want such information as they had their own information on the export price. The Authority communicated willingness to forward a request from the exporter to DGCIS for the information, but no request was received from KKPC.

13.1. Post-disclosure, KKPC has stated that despite no objection by the domestic industry, DGCIS data has not been made public, that KKPC only required that data furnished by the domestic industry to the Authority which formed the basis for decision should be available in the public file. However, the Authority has not relied on the data provided the domestic industry for making its decisions, but has obtained it from DGCIS after investigations were initiated and all data has been indicated under the volume effect.

**e) Non-response in earlier investigations**

14. The domestic industry has held that LGC should state the reasons for failure to respond in the past investigations. While disputing the domestic industry's right to ask this, LGC has declared that NBR production started only after the acquisition of LG Daesan Petrochemicals Ltd in January 2005 and its subsequent merger in January 2006. Neither LGC nor its related party owned NBR prior to the acquisition..

**e) On the impact on downstream products**

15. AIRIA has submitted that the items being manufactured out of NBR are mostly used by the masses and manufactured largely by SSI units. The total direct and indirect employment of the Indian rubber industry is approximately 2 million. Imposing anti-dumping duty to protect a single foreign company at the cost of 2 million workers and the common masses would be a travesty of justice and would fuel further price increase of products meant for the masses and go against the Government's avowed policy to check inflation. Further, rubber products being exported on marginal costing basis, the industry had to have a viable domestic market to sustain its export pricing. With high prices of all oil based products, the industry is already reeling under high input cost and imposition of anti-dumping duty would severely handicap its export prospects. Additionally, the Indian manufacturer did not manufacture all grades of nitrile rubber required by rubber industry, which needed it for manufacture of rubber auto components, the tremendous growth potential of which sector would be jeopardized if its major raw materials are subjected to duties, thereby increasing its input costs.

**g) On trade agreements**

16. AIRIA has stated that India was in the process of finalizing Asian Pacific Trade Agreement (APTA), seeking preferential tariff on trade with these countries including South Korea on the one hand, while on the other, India sought to impose additional duties on imports of NBR from the same country even though the item is covered under APTA.

**Post disclosure comments**

**(a) On change of name**

17. KKPC has requested the Authority to note the correct name of their company as Kumho Petrochemicals Ltd. and use that name in the final findings to avoid creating practical difficulties. However, the Authority noted that it had asked the company in June

2008 to provide a copy of the certificate of incorporation of the new company, the operating structure before and after the change and the pattern of shareholdings, to facilitate the examination of the change. As these were not furnished, the Authority is constrained to retain the same name as in the response filed by the exporter.

**(b) Other aspects**

18. Comments of the All India Federation of Rubber Footwear Manufacturers have been disregarded as they were not in relation to the facts contained in the statement.

**E.2 Examination by the Authority**

19. The Authority has carefully examined various submissions made by the interested parties in connection with the initiation of this review investigation and the documents relating to the change of ownership of the NBR production facility. Since all assets and liabilities of Apar Industries Polymers unit have been acquired by EIPL, the Authority holds that EIPL constitutes the domestic industry for the purpose of the current investigation. In addition, all other arguments raised during the investigation and in submissions by interested parties have also been examined by the Authority to the extent they are relevant to the investigation and analysed at appropriate places in the findings.

**F. DUMPING DETERMINATION**

20. Section 9A (5) read with Rule 23 of the Anti Dumping Rules provides that the Designated Authority shall, from time to time, review the need for continued imposition of anti dumping duty and if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty, shall recommend to the Central Govt. for its withdrawal. Hence, the issues before the Authority are to examine

- ❖ Whether dumping is likely to continue or recur, if definitive duties are removed or allowed to expire;
- ❖ Whether injury to the domestic industry is likely to continue or recur, if definitive duties are allowed to expire or are removed.

The issues have been examined in the ensuing paragraphs.

**F.1 Views of interested parties**

**a) On costs of production**

21. The domestic industry has submitted that the exporter, KKPC undertook significant production and purchase of butadiene. 50% of its butadiene requirement is purchased, while the rest is captive production. The transfer price of captive butadiene should not be at the cost of production but at the market price to avoid shifting profits of butadiene to downstream products, as per the Supreme Court Judgement in the RIL case.

But KKPC has disputed the applicability of the RIL judgement to the price of the raw material on the ground that (i) the judgement applied to the determination of non-injurious price (NIP) and not normal value and that AD Rules lay down that the cost element in normal value should be determined based on the records of the exporter/producer if these records are in line with the accepted accounting principles of the exporting countries. Further, that valuation of raw materials has been on the basis of moving average and records were in accordance with Korean GAAP. LGC has also stated that in past investigations, DGAD has adopted the cost of production as transfer price in case of captive produced raw materials and as there was no reference to fair market value under the Rules and the domestic industry's interpretation could not be applied to the costs of the exporters.

22. The domestic industry has held that KKPC has wrongly claimed interest cost apportioned to the product with a view to understate cost of production and impact normal value and that interest income cannot be reduced from interest cost. KKPC has denied such set-offs.

23. The domestic industry has charged that KKPC traditionally claimed inland freight without identifying it with individual sales transactions and packing cost not based on actual expenses incurred. KKPC has averred that inland freight claims have been based on actual freight expenses incurred and packing cost calculated on the basis of actual cost incurred.

24. The domestic industry has submitted that (a) KKPC's cost of production should be critically examined in terms of costs of all raw materials, consumption norms, cost of utility, conversion cost, interest costs; (b) that domestic sales should be in the ordinary course of trade; c) that price adjustments should be linked with individual transactions and the cost of production and selling price must be determined net of packing cost in view of past disputes on packing; (d) that the profit- centres approach followed could result in understated cost of production. KKPC has dismissed these arguments as baseless and verifiable by the DA.

25. The domestic industry has claimed that LGC has claimed interest and SGA cost based on actuals as well turnover but they should allocated only on turnover basis. LGC has joined issue stating that their SAP system identified all the costs directly attributable to the product first and apportioned those not identifiable with a product on turnover basis, in line with the fundamental principle of computing product costs.

**b) On adjustments**

26. The domestic industry has claimed that the normal value for both the Korean exporters should be the same as per Supreme Court judgement in the RIL case, but KKPC has argued that after computing a weighted average normal value for Korea, necessary adjustments may be made to the export price to make it comparable. The

domestic industry has counter-argued that comparison of weighted average normal value in Korea at ex-factory level with actual export prices of individual exporters constitutes fair comparison and KKPC needed to identify all factors affecting price comparability and to quantify the adjustments required to be made on their account to demonstrate the fairness or unfairness of the comparison, which can then be verified by the Authority.

27. The domestic industry has stated that in view of the past history of the exporter, their adjustments claims should be verified before adopting them. KKPC offered to subject these adjustments for verification.

28. The domestic industry has pointed out that in the questionnaire response (i) duty drawback claims should be verified; (ii) common expenses have not been charged to NBR; (iii) details of captive raw material(s) should be separately provided; (iv) pre-FOB adjustment were excessive while those on exports appeared understated. KKPC has countered these arguments as being without merit and has declared that all information furnished was true; that the nature and operating procedures of Indian DEPB and Advance License schemes were different from the drawback schemes of India or Korea and other countries granted adjustments to such claims of drawback made. LGC has supported this argument, holding that it has been a consistent practice of DGAD to grant such adjustments when established to be linked to imports of raw materials and export of the product.

29. The domestic industry has claimed that the Korean exporters have continued to export to India at dumped prices. KKPC has refuted the claim, holding that the verification of their accounts would establish no dumping or any likelihood of dumping. However, the domestic industry has stated that in all investigations conducted, KKPC had claimed no dumping, but the Authority had found dumping above de-minimus. Besides, in spite of imposition of duty, KKPC was the largest supplier to India.

## **F.2 Republic of Korea**

30. Two producer(s)-exporter(s) from Korea RP, viz., Korea Kumho Petrochemicals (KKPC) and LG Chem (LG) had filed their questionnaire response after initiation of the review. The costing data submitted by these co-operating exporters were examined in accordance with the Rules and reports of the examination were made available to the exporters for their comments. The dumping margins in respect of these exporters have been worked out based on the data submitted by the exporters.

31. The Authority notes that the Hon'ble Supreme Court of India, in the Civil Appeal No. 1294 of 2001, M/s RIL Vs Designated Authority & Others, has held that normal value is not exporter-specific but exporting country-specific. In pursuance of the Supreme Court Judgment in the afore mentioned case the normal value of the subject goods for the subject countries have been determined, first for the individual co-operating exporters and then based on the individual normal values, a single weighted average

normal value has been worked out for the product under consideration for the exporting country as a whole.

## **F.2.1 Korea Kumho Petrochemicals Co (KKPC), Korea RP**

### **Normal Value:**

32. KKPC is a limited liability company, a member of the \*\*\* Group, established in \*\*\* under the Korean Commercial Law. The company is engaged in the manufacture and sale of petrochemical products like synthetic rubber and latex. KKPC merged with \*\*\* in \*\*\* and acquired the chemical business segment of \*\*\* in \*\*\*. KKPC's stocks have been listed on the Korean Stock Exchange since 1988. Its corporate office is located in Seoul and its factory producing NBR at Ulsan.

33. The production process involved reacting the two primary raw materials, acrylonitrile and butadiene to produce a liquid polymer, which is then coagulated, dried and packed as NBR bale. Butadiene is produced in-house and purchased locally as well as imported, while acrylonitrile is purchased locally.

34. Cost verification of KKPC and their sales transactions, including various adjustments claimed, were carried out from the data submitted. Accounts are maintained as per the calendar year in the Korean won in line with the Korean accounting system. For NBR, KKPC follows the process cost accounting system. Conversion costs are based on the actuals and added to the raw material costs to calculate actual manufacturing costs. The cost of production has been readjusted due to an error in the manufacturing cost, consideration of selling, general and administrative expenses on turnover basis, disallowance of set-off of interest expenses and its allocation on turnover basis. Following these adjustments, the cost of production worked out US\$ \*\*\* per MT.

### **Post-disclosure comments on costs**

34.1 KKPC has accepted the correction to the manufacturing overheads in respect of KNB35L and regretted the error. But they have claimed that the Authority has allocated the total expenses for the company to the product concerned based on turnover. In the absence of reasons for rejection of their cost data, KKPC has been unable to furnish effective comments on the methodology adopted, but considered the changes unwarranted; that the derivation of the unit cost of SGA and financial expenses for domestic NBR sales by dividing the totals by the quantity sold was incorrect and crude and the Authority should follow a three-step process of allocating the amount determined for NBR as a whole to domestic sales based on turnover, re-allocate it to various NBR grades based on grade-wise turnover in the domestic market and derive the unit cost by dividing the grade-wise allocation by the quantity sold. However, the Authority examined the financial expenses and SGA expenses incurred by KKPC, as per data furnished, up to the ex-factory level and observed such expenses to be equally applicable to the subject product irrespective of whether they are meant for domestic or export sales.

As only expenses up to the ex-factory level has been considered, the Authority holds the methodology adopted to be correct.

34.2 The domestic industry has reiterated their submission that captive butadiene must be considered at market price, import-export prices of acrylonitrile from Korea compared with the price reported by KKPC, that costs of other raw materials claimed by the exporter in the past were grossly understated. They have stated that the disclosure statement did not comment on the reasonableness of KKPC's information or on the consumption factors claimed by KKPC. However, the Authority has considered their submissions, but in absence of any prima facie and case-specific evidence contrary to it, KKPC's claim has not been rejected. As regards the consumption factor, these have been adjusted for the raw material requirements for a given grade of NBR, wherever the claim of exporter has not been found reasonable.

34.3 Referring to the conversion costs being based on "actuals", the domestic industry has held that since KKPC produced number of products at one location, conversion costs are shared and that KKPC could not reasonably have provided "actual" costs. However, the Authority has examined the response of the exporters that they accumulate the costs at various cost centres and departments, corresponding to the actual production processes or are indirect cost centres that support multiple production processes. Costs incurred in indirect cost centres are allocated to the process cost centres and the cumulated costs are allocated to the products of the particular process. Each month, KKPC calculates the actual cost of raw materials that are used for NBR production. Further, the conversion costs are recorded separately on an actual basis in the cost system. By adding up the raw material and conversion costs of separate components, KKPC calculates the actual cost of manufacturing various products.

34.4 Responding to other issues raised by the domestic industry, the Authority notes that interest income has not been reduced from the interest cost or otherwise for working out cost of production and sales of subject goods, that all SGA expenses upto ex-factory level expenses have been considered and allocated based on turnover for consideration in cost of sales, that packing expenses have not been considered in working out cost of production and sales since these are required to be shown as adjustments for working out ex-factory net selling price for domestic sales as well as export sales and 5% profit on cost of sales (excluding interest) is considered as reasonable profit.

35. KKPC had substantial domestic sales of NBR of \*\*\*\*\* MT during the period of investigation, meeting the test of sufficiency, both overall as well as grade-wise. Application of the ordinary course of trade test showed that total profit making transactions were only little above \*\*\* % of the transactions and did not satisfy the 80-20 test and the Authority had constructed the normal value on the basis of the cost of production plus a reasonable margin of profit.

35.1 In the post-disclosure comments, the domestic industry has indicated that the determination of the dumping margin for the Korean producers did not appear to be

correct and desired a review, as the dumping margin had been above de-minimis in the previous investigation, despite subsequent modification by CESTAT and though the raw material prices increased in the current POI relative to the earlier investigation, the export price had not increased proportionately. Therefore, the dumping margin should have increased.

36. Accordingly, the Authority revisited the calculations and recomputed the normal value, taking into account only the profitable domestic transactions of the grades exported to India.

	Domestic Sales (MT)
Total	***
Grades exported to India	***
Profitable transactions of grades exported	***
(i) as % of total	***
(ii) as % of grades exported	***

The average selling price of these transactions comes to US\$ \*\*\* /MT. The adjustments on domestic sales claimed towards inland freight, credit cost and packing charges have been allowed as claimed. Net of adjustments, the weighted average ex factory normal value comes to US\$ \*\*\* PMT, as below:

Profitable transactions	Domestic Sales	Unit selling price	Adjustments	Ex-factory Normal value
	MT	\$ PMT	\$ PMT	\$ PMT
	***	***	***	***

### Export price

37. During the POI, KKPC has exported \*\*\* MT of NBR to India.

The quantity of all sales has been as follows:

NBR Sales (%)	2005	2006	POI
a) Domestic	26	22	20
b)Exports to India	15	14	14
c) Other countries	59	64	65
Total	100	100	100

38. Exports to India have been both direct to the customer or commission agent and indirect, through a trading company, M/s Daewoo International, prices being negotiated for each customer. Inland transportation charges through trucks have been calculated by weighting total charges for all grades sold by the quantity sold to the customer. The product is packed in bags of 35 kgs PB or boxes of 1.05 MT for all sales, costs being computed based on the unit cost of the packing material and the conversion factors for them. The credit terms provided to India include letter of credit as local LC, LC at sight,

LC 30 days, LC 60 days and LC 90 days. LC 90 days are the maximum. Also, indirect export sales through Daewoo International reported to be an unrelated trading company, was \*\*\*% of total export sales to India and the net export rates have been lower since certain adjustments like overseas insurance and credit expenses are not incurred.

39. Based on the actual CIF price of exports to India, net export price at the ex-factory level have been worked out after adjustment for ocean freight and insurance, inland freight, commission, customs fees, credit costs and packing as claimed by the company. The average net ex-factory export price has been determined at \$ \*\*\* per MT.

Sales (in MT)	Export price \$ PMT	Adjustments \$ PMT	Ex-factory EP \$ PMT
***	***	***	***

## F.2.2 LGChem (LGC), Korea RP

### Normal Value:

40. LGC is a corporation, a member of the \*\*\*\* Group, established under the Korean Commercial Law in \*\*\*, after being hived off from \*\*\*\*. It merged with LG Daesan Petrochemical Ltd in January 2006, which company in turn was spun off from Hyundai Petrochemical Co: Ltd in January 2005. LGC has been listed in the stock exchange since 2001. It is engaged in the business of petrochemicals and other industrial materials. The main corporate office of LGC is at Seoul and NBR is produced at its Daesan plant.

41. Cost verification of LGC, their domestic sales transactions, including various adjustments claimed, were carried out from the data submitted. The Authority noted that there was a discrepancy in the computation of raw material cost as the actual consumption in the various grades fell below the consumption norms. Therefore, the Authority adjusted the cost of raw materials as per the consumption norms, allowed the conversion costs as indicated by the company and reallocated the general, administrative and interest expenses on turnover basis. Consequently the average cost of production of LGC worked out to \$ \*\*\* per MT.

### Post-disclosure comments on costs

41.1 LGC has raised strong objection to the rejection/modification of their information by adopting some hypothetical consumption norms in respect of consumption of two main raw materials and has held the re-computation of their production cost of NBR in gross violation of the principle of natural justice and against the past precedence of DGAD. They have stated that it was unclear if DGAD proposed to work out normative cost for LGC or actual cost incurred and that as per Annexure 1(1) of the AD Rules, DGAD was bound to determine normal value based on the records kept by the co-operating exporter/producer, and can use facts available as per Rule 6(8) of the AD rules only in the event of non-co-operation by an interested party. Further, DGAD has violated the provisions of AD Agreement which provides for calculation of actual cost to arrive at

normal value and not normative cost based on hypothetical assumptions and that DGAD has not provided the basis or logic for the consumption norms adopted in calculating the revised cost of raw materials.

41.2 However, as conveyed earlier, the Authority reiterates that the consumption norms adopted are not hypothetical, but are most conservatively adjusted based on the facts available. That both Annexure 1(1) to the AD Rules and Article 2.2.1.1 of the WTO AD Agreement provide for the determination of the cost elements in the context of normal value normally “on the basis of records kept by the producer or exporter... if such records reasonably reflect the cost associated with production and sale of the articles under consideration.” If not, the Authority was justified in correcting any distortion in input costs, arising from understated consumption norms or prices, to ascertain the reasonable cost of production or sales. In LGC’s case, the Authority has, prima facie, found the consumption of major raw materials (ACN & BD) to be understated as (i) actual ACN consumption was lower than the prescribed content for all NBR grades, except one, as seen from LGC’s own statement of grade-wise ACN content; (ii) Where similar grades are produced by both LGC and KKPC, the reported consumption levels of LGC are lower than those of KKPC by about \*\*\*% in case of ACN and \*\*\*% in case of BD; (iii) Though there is no prescribed level for BD content, it is observed from the consumption levels of KKPC and the domestic industry as well as the SION norms, that for a kilogram of NBR, ACN would be as per prescribed norms, the rest being BD, so that total consumption for both inputs would be 2-3 % higher than the output. Therefore, the Authority has held that the understated consumption has distorted raw material costs of NBR produced and has made a conservative adjustment by (a) assuming the grade-wise ACN level indicated by LGC where no comparable grade was available, while the BD consumption was proportionately increased in line with ACN consumption, resulting in an increase in ACN & BD consumption by about \*\*%, whereas the understatement in BD is upto \*\*\*%. (b) adopting the actual consumption of raw materials based on the same grades produced by KKPC, where comparable grades are available.

41.3 LGC has also claimed that their system can handle data for each product group level. All those expenses which can be directly identified to the product concerned have been booked as such to the product, whereas other common overheads are apportioned to the product on turnover basis. The Authority had examined the data furnished and found that the basis of allocation for general and administrative overheads was actual and turnover. It was noted that LGC was a multi-product company and the sales turnover of the subject product constituted just \*\*\* % of the total co: turnover. Being generic in nature, general and administration expenses are normally allocated on the basis of turnover, even in determining non-injurious price for the domestic industry. The Authority has adhered to this rule to work out the cost to make and sell.

41.4 LGC has held that interest expenses are included in SGA and had already reported the financial expenses in type-wise costing, that there has been an error in computing the SGA expenses and financial expenses have been double counted in

DGAD's calculation. However, the Authority has dealt with interest expenses and SGA costs separately and has not included interest expenses in SGA costs. There was no error in re-computation of SGA expenses and financial expenses have not been double counted, but shown separate from SGA expenses.

42. Post-disclosure, LGC has expressed surprise that

- Despite plans for on the-spot verification, the Authority decided to conclude the investigation based on table study without a visit
- In spite of all co-operation, LGC has been denied the opportunity to show that the information submitted by them was based on facts and not on incorrect assumptions;
- In the past, DGAD had verified the information of fully cooperating exporter, but in LGC's case, no intimation for modification of consumption norms was given earlier.

However, it is the Authority's prerogative to conduct on-site or table verification of data/information provided by the exporter and satisfy itself as to the accuracy of the information supplied by co-operating interested parties. Besides, the Authority had provided LGC an opportunity to offer comments on the re-computed costs and deny that there has been any violation of the principle of natural justice.

43. LGC had substantial domestic sales of \*\*\* MT including various grades of NBR during the period of investigation. On the basis of the cost of production so determined, the ordinary course of trade test conducted on their domestic sales transactions showed that \*\*\* % of domestic sales fell below the cost of production. Therefore, the Authority had constructed the normal value on the basis of the cost of production, with a reasonable margin for profits.

	Domestic Sales
	MT
Total	***
Grades exported to India	*****
Profitable transactions of grades exported	***
(i) as % of total	***
(ii) as % of grades exported	***

\*: Excluding sub-standard goods

43.1 Post disclosure, the domestic industry has queried if off-grade NBR had been excluded for determining normal value or export price or both and if such exclusion had been demanded by the exporters and the reasons for the exclusion.

44. The Authority re-computed the dumping margin, taking account of only the profitable domestic transactions. The average selling price of these transactions comes to US\$ \*\*\* /MT. The adjustments on domestic sales claimed towards inland freight, credit

cost and packing charges have been allowed. Net of adjustments, the weighted average ex factory normal value comes to US\$ \*\*\* PMT, as below:

Profitable transactions	Domestic Sales	Unit selling price	Adjustments	Ex-factory Normal value
	MT	\$ PMT	\$ PMT	\$ PMT
	***	***	***	***

### Export Price

45. During the POI LGC had exported \*\*\* MT of NBR to India..

Quantity-wise sales in all markets are as follows:

NBR sales (MT)	2005	2006	POI
a) Domestic	24	23	21
b) Exports to India	1	1	1
c) Other countries	75	76	78
Total	100	100	100

46. Based on the actual CIF price of exports to India, net ex-works export price to India has been worked out after adjusting the CIF export price for ocean freight and insurance, inland freight, commission, credit costs and packing, as claimed by the company. Based on the above weighted average net ex-works export price has been determined as US\$ \*\*\* per MT

Sales (in MT)	Export price	Adjustments	Ex-factory EP
***	\$ PMT	\$ PMT	\$ PMT
***	***	***	***

### F.2.3 Normal value for Korea RP

47. The Authority noted that though there are various grades of NBR being exported by KKPC and LGC, this being a sunset review, the scope of the product remains same as was defined in the original investigation, where all grades were treated as a single product. Therefore, a single average normal value has been computed for both companies and then weighted to arrive at the country-specific normal value, in pursuance of the apex court's ruling in CA No. 1294/2001. This normal value has been compared with the export price for the individual exporters to determine individual dumping margins of the exporters. The normal value so determined is \$ \*\*\* per MT.

In \$ per MT	KKPC	LGC	Weighted average
Normal Value	***	***	***

### F.2.4 All other exporters from Korea RP

#### Normal Value

48. As no other exporter from Korea RP made any submission before the Authority in response to this review investigation, in view of the apex court ruling in CA No: 1294/2001, the Authority has used the weighted average normal value at US\$ \*\*\* PMT for all other exporters from Korea.

### **Export price**

49. The net export price has been determined based on the lowest export transaction value from Korea of the cooperating exporter after allowing for due adjustment towards transportation, ocean freight commission etc. Net export price works out to US\$ \*\*\* per MT.

## **F.3 Germany**

### **F.3.1 Normal value for Germany**

50. As no exporter from Germany responded to the initiation of the review investigation, the Authority has determined the normal value of the subject goods in Germany on the basis of facts available in terms of Rule 6.8 of the Antidumping Rules. The constructed normal value has been based on the cost of production, conversion costs and selling, general & administrative expenses of the domestic industry in India, the prices of the major raw materials based on their export prices from Germany to the rest of the world and on the actual purchase prices of the domestic industry for other raw materials and process chemicals, together with a reasonable margin of profit. Accordingly, the normal value for all exporters from Germany has been determined as US\$ \*\*\* per MT.

### **F 3.2 Export Price for Germany**

51. The export price from Germany has been determined based on the weighted average export price reported by DGCI&S during the POI after allowing for admissible adjustments towards ocean freight, insurance, inland freight, and commission on the facts available basis. Accordingly, net ex-works export price for all exporters from Germany has been determined as US\$ \*\*\* per MT.

## **F.4 Dumping Margin**

52. The Authority has worked out the dumping margin by making a comparison between the weighted average normal value and export prices at ex-factory level. The dumping margins for the subject countries as follows:

### **F.4.1 Dumping margin for Korea**

53. For the co-operating exporters, the dumping margin has been determined as the difference between the weighted average normal value and the ex-factory export price.

For others, the dumping margin has been determined as the difference between the weighted average normal value and the lowest export price of the co-operating exporter after adjustments.

#### F.4.2 Dumping margin for Germany

54. The Authority has worked out the dumping margin by making a comparison between the normal value and export prices at ex-factory level, based on the constructed normal value and the weighted average export price determined for the product as per DGCI&S data.

#### F.5 Dumping margin : Summary

	Normal Value US \$/ MT	Export Price US \$/ MT	Dumping Margin US \$/ MT	Dumping Margin %
Korea RP				
KKPC		***	***	1.69
LGC	***	***	***	0.05
All others		***	***	13.42
Germany	***	***	***	-11.01

55. Dumping margins during the POI are negligible or negative, except in the case of other exporters from Korea RP. However, the Authority noted that in a sunset review, current dumping margin is not a material fact and what is required to be examined is the likelihood of recurrence in the event of no dumping during the POI.

#### Post-disclosure comments

56. KKPC has stated that

- The comparison of the weighted average normal value with their individual export price was inconsistent with the relevant legal provision;
- They had already pointed out the fallacy in the Authority's interpretation of the Reliance judgement and the remedy provided in the Rules to correct the distortion arising thereof;
- The Authority has to harmoniously interpret the statutory provisions (of the Indian AD Law) with the Court decision by considering all available evidence on the costs based on the actual data pertaining to production and sales in the ordinary course of trade by the exporter/producer or the actual amount incurred and realised by the exporter in producing and selling in the domestic market. The weighted average of the actual amounts incurred and realised by the other producers or exporters being investigated can be considered only in the event of non-cooperation.

- Annexure 1.6(i) to the AD Rules mandates a fair comparison between normal value and export price with due allowance for differences which affects price comparability, which cannot be made unless individual normal values are computed for individual exporters.
- The Court judgement did not require the Authority to determine a single normal value for the country as a whole and in doing so, the Authority has erred.
- Fair comparison rules have not been followed in arriving at the dumping margin. A WTO panel had held that the principle of fair comparison is applicable only at the time of comparing the export price with the normal value. Adjustments are to be made to either at that time, irrespective of methodology of determining the normal value.
- The use of the word “its” in Section 9(A)(1) in “any article exported from any country at less than its normal value” implied that the normal value should be for the goods for which the dumping margin is being determined, not with a weighted average normal value. A weighted average normal value can be arrived at only when the cost of production of the producers are the same; otherwise differences in cost of production can be taken into account by making suitable adjustment to the export price. Hence, the ex-factory export price arrived at by the Authority has to be adjusted by an amount equal to the difference between the normal value for KKPC and weighted average normal value determined for Korea RP.
- The Authority has to determine the “actual” margin of dumping based on the exporter’s normal value, which is a function of his cost, SGA and profit. Using the costs of some other competing entity is not within the meaning of “actual” cost and the Authority erred in arriving at a single weighted average normal value.
- The weighted average normal value computed has changed the negative dumping margin of KKPC into a positive dumping margin and vis-à-vis for LGC. Rule 18 (2) of the AD Rules contains a proviso that when arriving at weighted average dumping margin the Authority ignore negative or de-minimis dumping margin to ensure that non-sampled companies do not get the benefit of the de-minimis rates, which principle should be a guide in arriving at a weighted average for KKPC and LGC when KKPC has a negative dumping margin.

57. LGC has stated that they had no comments on the disclosure, since even with the application of the cost adjustments related to raw materials and SGA, their dumping margin was negative. But they would like their cost information to be accepted by DGAD.

58. The Authority recomputed the dumping margin, taking cognizance of only the profitable transactions of the two producer-exporter(s) in the grades exported to India. Both exporters have positive, though de-minimis dumping margins.

## **G. INJURY DETERMINATION**

59. Annexure II to the Rules requires that a determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products. Annexure-II (ii) and (iv) provides as under:-

(ii). “While examining the volume of dumped imports, the said Authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India With regard to the effect of the dumped imports on prices ...the designated authority shall consider whether there has been significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred, to a significant degree.

“(iv). The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”

#### **G.1.1 Views of the interested parties**

60. The domestic industry has submitted that since the subject goods are already attracting antidumping duty, the various economic parameters relating to injury to the domestic industry need not show injury. Nevertheless, they claim that the volume and price effects of dumped imports are substantial, that increased production and capacity in line with the increase in demand only led to increase in inventories, under utilization of capacity and resultant curtailment of production in the POI, that current exports are at dumping prices and that no consumer would import NBR if it was available at lower prices from the domestic producer. Besides, though their conversion costs had declined over the years, intensified dumping from some sources and fresh dumping from new sources have caused injury.

61. The exporters and other interested parties have claimed that the domestic industry did not suffer material injury. KKPC has pointed to the discrepancies in the import statistics given in the petition and Proforma IVA, despite raising this issue at the public hearing. They have indicated their export volumes stagnating at below 30% of total imports in the past eight years, while LGC have declared that they are neither dumping nor undercutting. KKPC has also claimed that the domestic industry had itself admitted that though the demand increased only by 7%, capacity increase was over 20% and that it was the disproportionate increase in capacity which has led to higher fixed cost, inflated NIP and so-called losses in balance sheet. Price undercutting of 1-10% could be due to

differences in level of trade. Despite 10 years of protectionist measures, the claim that the domestic industry has not recovered was erroneous and warranted careful scrutiny of their data. In addition, the whole injury analysis presented by domestic industry was flawed and duties have been in force on imports from other sources, viz., against EU (excluding Germany), Brazil, Mexico from 2005 and against Chinese Taipei from 2000. By domestic industry's own admission, injury was caused by imports from other countries and not subject countries.

62. KKPC has also charged the domestic industry as providing different data sets relating to profits in different investigations, viz., in the final findings of the mid-term review of imports from Korea RP dt. 6.6.2005, from EU, Mexico and Brazil dt. 5.10.2005 and from Chinese Taipei dt. 27.02.2006 and that the data need to be examined in the light of this fact.

63. AIRIA has submitted that as per 2006-07 financial results, Apar Industries was a dividend paying company and had assessed the outlook of the NBR business as positive, in view of growing demand linked to the growth of automobile industry and profitability margins as improving. Besides, the fact that a French company acquired the polymer division of Apar Industries at a substantial price implied the high profit potential of the company. The company has enjoyed protection of anti-dumping duty, and indulged in frequent increases in the domestic price of NBR, taking advantage of their monopoly position. They have also exported NBR to China at lower rates than the import price in India, completely nullifying any argument on continuation of anti-dumping duty. Further, as against the licensed capacity of 15000 MT, annual production was only about 8000 MT, so that they could not cater to the demand of over 20,000 MT. The industry had to face global competition without leaning on protection from the Government.

64. LGC argued that domestic industry was suffering due to its location disadvantage, having to incur heavy expenses to transport raw materials to its factory and that they were operating at an uneconomical capacity, both of which would result in high cost compared to imported product. Besides, the domestic industry could not improve its performance in spite of AD duty in place for ten years.

## **G.2 Examination by the Authority**

65. The Authority has taken note of various arguments raised by various parties in their submissions and the issue of continuation of injury to the domestic industry has been examined in the light of these arguments made before the Authority. Besides, the Authority noted that this was a sunset review of the measure already in force and examined the issue of cumulative assessment of injury to the domestic industry on account of simultaneous dumping from the subject countries, in terms of Annexure II (iii) of the AD Rules and holds that the conditions specified in the said Rules are satisfied in this case for cumulative assessment.

66. The Authority observed that the original duty was imposed on reference price basis and altered to fixed duty in the sunset review. The injury suffered by the domestic industry and the causal link between the dumped imports and injury to the domestic industry has been examined. It was noted that imports of the subject goods are simultaneously entering the Indian market from several countries apart from the subject countries, including the European Union (excluding Germany), Brazil, Mexico and Chinese Taipei, which have already been treated as dumped imports. Therefore, dumped imports from all such sources have been cumulated for the purpose of examination of the impacts of dumped imports on the domestic industry.

**(A) Volume Effect of dumped imports and Impact on domestic Industry**

67. Transaction-wise data from DGCIS show that the subject product imports has been reported under customs classifications 40025900. Since the product description is only indicative, all imports of subject goods irrespective of their classification have been included for the purpose of determination of volume, value and average import price. As the exporters from Korea have provided data on their exports to India, which are higher in volume and value as compared to DGCIS data, this data has been adopted for the POI. The details of exports from Korea as shown in the World Trade Atlas are also indicated below. Data on Germany related to NBR exports is not available in the WTA and instead a picture of EU exports to India in the relevant period is shown merely to study the trend.

68. In the analysis that follows, DGCI&S transaction data is utilised to assess volume of imports and domestic demand except for the POI, where exporters' data has been used. The effects of the volume of dumped imports from the subject countries as well as imports from other countries have been examined as follows:

**i) Import statistics: Volume of imports**

<b>Quantity in MT</b>				
Country	2003-04	2004-05	2005-06	2006-07
Germany	50	56	43	154
Korea RP	2051	2931	2944	3744
Subject countries	2100	2987	2988	3898
Brazil	365	713	380	334
EU ( barring Germany)	2230	2849	1114	2178
Chinese Taipei	88	343	120	128
Others dumping	2684	3905	1614	2640
Total dumped imports	4784	6892	4602	6538
Those not dumping	802	797	878	1889
Total	5587	7689	5480	8427

<b>Percentage Share</b>				
Country	2003-	2004-	2005-	2006-

	04	05	06	07
Germany	0.89	0.73	0.79	1.82
Korea RP	36.70	38.12	53.73	44.43
Subject countries	37.60	38.84	54.52	46.26
Brazil	6.54	9.28	6.94	3.96
EU ( barring Germany)	39.92	37.05	20.34	25.84
Chinese Taipei	1.58	4.46	2.19	1.52
Others dumping	48.04	50.79	29.46	31.32
Total dumped imports	85.64	89.63	83.98	77.58
Those not dumping	14.36	10.37	16.02	22.42
Total	100	100	100	100

#### Trends in quantity of imports

Country	2003- 04	2004- 05	2005- 06	2006- 07
Germany	100	112	87	308
Korea RP	100	143	144	183
Subject countries	100	142	142	186
Brazil	100	195	104	91
EU ( barring Germany)	100	128	50	98
Chinese Taipei	100	388	136	145
Others dumping	100	146	60	98
Total dumped imports	100	144	96	137
Those not dumping	100	99	109	235
Total	100	138	98	151

69. The Authority noted that NBR imports from Germany have considerably increased in the POI compared to the earlier years of the injury period, while Korean NBR imports which have always been high, has increased even more in the POI. Hence, total subject countries' imports rose from 2100 MT to about 3900 MT. NBR imports from other European Union countries, Brazil, Mexico and Chinese Taipei, have been tabulated separately, but there were no imports from Mexico in the injury period. Though these dumped imports are seen to register a fluctuating trend, they have remained relatively stable at about 2600-2700 MT over the injury period. Cumulated dumped imports thus recorded an increase from about 4800 MT to over 6500 MT. Other country exports of NBR to India have also increased in volume, with a pronounced jump in the POI.

70. The computations also show that NBR exports from Germany to India have been below 2% every year of the injury period while Korean NBR exports rose from 38% of total product imports in 2003-04 to 54% in 2005-06 and fell to 44% in 2006-07. Cumulatively, however, dumped imports from the subject countries increased from 37.6% to 46% of total imports over the injury period. The share of imports from other

countries indulging in dumping fell from 48% in 2003-04 to 31% in 2006-07, while imports from non-dumping countries grew from 14% in 2003-04 to 22% in 2006-07. Thus, the decrease in the share of other countries dumping has been appropriated by the increased share of subject countries and countries not dumping. The overall share of cumulated imports fell from 86% in the base year to 78% in the POI.

71. The trend in import volumes indicate that German imports recorded the maximum increase from 100 in the base year to 300 in the POI, but the base figure of imports was just 50 MT. Korean imports grew from 100 in the base year to 183 in the POI from a base of over 2000 MT. Cumulatively, subject countries imports have risen by a factor of 85 and total dumped imports by a factor of 37, relative to the base year. The trend of imports from both Brazil and other EU countries show a fall over the injury period, while those from Chinese Taipei as also from non-dumping countries have increased in volume. Overall imports grew by 50% from the base year.

72. For a counter check, the Authority examined the data from the World Trade Atlas (WTA).

**NBR exports from EU and Korea RP as per WTA data**

	2003	2004	2005	2006	2007
<b>EU -25 NBR exports to India</b>					
Qty (MT)	652	1034	982	712	999
Rs lacs	338.83	698.96	559.33	440.41	718.07
Rate in Rs/MT	51968	67597	56958	61855	71879
<b>South Korea – Exports</b>					
Qty (MT)	3778	3822	6209	6518	9736
Rs lacs	1780.36	2232.70	4655.94	5004.76	7375.78
Rate in Rs/MT	47124	58410	74986	76789	75758

The export data recorded in the WTA from Korea RP and the European Union, (since German exports of NBR are not separately available), showed that Korean exports contained in the WTA are fairly close to what has been reported by the exporters.

**Variation in DGCIS and WTA data on Korean NBR trade**

	2003	2004	2005	2006
Qty (MT)				
DGCIS *	2051	2931	2944	3744
WTA	3778	3822	6209	6518
Variation	-1727	-892	-3265	-2773
Rate/ MT				
DGCIS *	53841	70468	85769	90066
WTA	47124	58410	74986	76789
Variation	6717	12058	10783	13277

\*: On financial year basis.

73. The variation in volumes in the two data sets, viz., DGCIS and WTA is seen in the two tables, though the time periods differ. WTA data is on calendar year basis versus financial year basis in DGCIS. The EU exports data gives an idea of the trend in volume of exports to India. Though showing a roller coaster movement in the 5-year period, there seems to be a downtrend during the injury period. On the other hand, in the case of Korean imports, the trend is distinctly an uptrend, particularly marked in 2005. The Authority has noted that the higher export volumes from Korea RP have not been captured in the official statistics, hinting at the possibility of considerable under-reporting of quantities imported. Post-disclosure, KKPC has commented that incorrect reporting of quantity could imply that DGCIS has not properly collated the data or had left out certain shipments. The rate per MT, as per WTA data, is lower than DGCIS data.

#### Value of imports

(In Rs lakhs)

Country	2003-04	2004-05	2005-06	2006-07
Germany	44.14	33.08	41.78	187.37
Korea RP	1104.03	2065.21	2525.2	3372.45
Subject countries	1148.17	2098.29	2566.97	3559.82
Brazil	212.04	491.91	326.14	299.88
EU ( barring Germany)	1639.88	2190.53	1323.91	2219.49
Chinese Taipei	50.91	264.83	119.12	136.88
Others dumping	1902.83	2947.26	1769.16	2656.25
Total dumped imports	3051.00	5045.55	4336.13	6216.07
Those not dumping	929.33	893.5	1122.77	2275.04
Total	3980.32	5939.05	5458.91	8491.12

74. The unit rate of German imports shows a fluctuating trend, but in the last two years of the injury period, there has been a marked increase. Compared with the unit rate from non-dumping countries, the lower rate is evident in all years barring the POI. In the case of Korea, the unit price has been consistently lower than those from non-dumping countries, while that of Brazil is still lower than the Korean rate in 2004-05 and in the POI, though the volume is barely a tenth of Korean volumes.

#### Rate per MT (Rs)

Country	2003-04	2004-05	2005-06	2006-07
Germany	88475	59283	96401	121962
Korea RP	53841	70468	85769	90066
Subject countries	54663	70259	85923	91323
Brazil	58066	68947	85817	89768
EU ( barring Germany)	73531	76891	118808	101916

Chinese Taipei	57636	77181	99267	107189
Others dumping	70904	75465	109588	100633
Total dumped imports	63774	73209	94225	95082
Those not dumping	115806	112114	127883	120410
Total	71248	77242	99618	100761

75. For calculating the domestic consumption/demand of the subject goods, the sales volume of the domestic industry has been added to the total imports into India.

### Assessment of Demand

	2003-04	2004-05	2005-06	2006-07	POI II
Subject countries	2100	2987	2988	3898	7367
Indexed	100	142	142	186	351
Others dumping	2684	3905	1614	2640	2640
Indexed	100	146	60	98	
Total dumped imports	4784	6892	4602	6538	10007
Indexed	100	144	96	137	209
Those not dumping	802	797	878	1889	1889
Indexed	100	99	109	235	
Total	5587	7689	5480	8427	11896
Indexed	100	138	98	151	213
Domestic industry sales	***	***	***	***	***
Indexed	100	120	108	107	
Captive consumption	***	***	***	***	***
Indexed	100	122	166	181	
Demand	***	***	***	***	***
Indexed	100	128	106	131	159
Domestic production	***	***	***	***	***
Indexed	100	122	116	124	

**POI II: data reported by exporters.**

### Market share in demand

% share of (indexed)	2003-04	2004-05	2005-06	2006-07	POI II
Subject countries	100	111	134	142	221
Others dumping	100	114	57	75	62
Total dumped imports	100	112	91	105	132
Those not dumping	100	77	103	180	148
Total	100	107	92	116	134
Domestic industry sales	100	94	101	82	67
Captive consumption	100	95	156	138	114
Dumped imports as %					

Domestic industry sales	100	120	89	128	196
Domestic production	100	118	83	110	169
Subj country imports as %					
Domestic industry sales	100	118	132	174	329
Domestic production	100	116	123	150	283

**POI II: data reported by exporters.**

76. The Authority observed that the share of NBR imports from the subject countries in demand as based on the exporters' data were 13% higher than DGCIS data. Cumulated dumped imports constituted share of 51% in demand. Total product imports rose from 45% to 61% in the injury period, while concurrently, the share of domestic industry fell from 49% to 33% in the same period. The share of captive consumption remained fairly stable. Computing the share of cumulated dumped imports to domestic industry sales, the percentages rose from 79% to 154% in the injury period and from 69% to 116% relative to domestic industry production. Post-disclosure, KKPC has held that imports from countries not subject to the current investigation cannot be clubbed together with the current subject country and the Authority is mandated to assess the effect of only imports from countries subjected to the current investigation and not of others. Taking due note, the share of subject country imports relative to domestic industry sales and production is seen to rise over the injury period from 34% to 114% in the first case and from 30% to 85% in the second case. The volume effect of dumped imports is quite substantial.

**B. Price effect of dumped imports**

77. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

78. For the purpose of this analysis, the weighted average cost of production, weighted average Net Sales Realisation (NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed price of imports from the subject countries to examine whether there has been significant price under-cutting or under-selling by the dumped imports compared with the price of the like product in India or whether such imports have depressed the prices or prevented price increases that otherwise would have occurred to a significant degree. Landed value of imports has been

calculated by adding 1% handling charge and applicable basic customs duty to the value reported in the DGCIS data of import prices from the subject countries.

79. Price under-cutting has been determined by comparing the landed value of dumped imports, with the weighted average ex-factory NSR of the domestic industry, where the rebates, discounts, commissions offered and the excise duties paid have been excluded. For price under-selling analysis, the

landed value of dumped imports was compared with the NIP of the subject goods, determined by taking into account verified cost and SGA expenses of the industry, together with a reasonable profit margin. To examine the price suppression and depression effects, the trend of NSR of the domestic industry has been compared with the cost of sales.

**Price under-cutting and under-selling (in Rs/ MT)**

	2003-04	2004-05	2005-06	2006-07	POI II
Customs duty %	25	20	15	12.5	12.5
Landed value					
Germany	111699	71851	111969	138579	
Korea	67974	85407	99621	102338	99647
Subject countries	69012	85154	99800	103766	100459
All dumping countries	73308	83564	99677	101999	
NSR	***	***	***	***	***
Price under-cutting	***	***	***	***	***
Germany	***	***	***	***	***
Korea	***	***	***	***	***
Subject countries	***	***	***	***	***
All dumping countries	***	***	***	***	***
Price under-cutting %					
Germany	(25-30)%	20-25%	(8-13)%	(25-30)%	
Korea	12-17%	3-8%	1-5%	1-5%	5-10%
Subject countries	10-15%	2-7%	1-3%	1-5%	3-8%
All dumping countries	5-10%	5-10%	1-3%	3-8%	
NIP				***	***
Price under-selling					
Germany				(***)	
Korea				***	***
Subject countries				***	***
All dumping countries				***	
Price under-selling %					
Germany				(18-23)%	
Korea				2-8%	8-13%
Subject countries				3-8%	5-10%
All dumping countries				5-10%	

80. There is positive price undercutting in the case of subject countries and total dumped imports. However, the percentage of under-cutting has shown about 8% decline

when considering only subject countries imports and by 3% for cumulated imports. The respective price under-selling percentages in the POI were 9% and 7% for subject countries and cumulated imports.

81. Price depression is said to exist when the industry's prices are lower than the level of the previous period, while price suppression occurs when dumping prevents price increases that would otherwise take place due to increase in costs, except where cost savings have been made. From the table below, it is evident that price suppression exists, as the domestic industry has not able to increase its prices in proportion with the increase in cost, which increase has been due to the higher input prices in the second half of the injury period. There is no price depression.

### **Price suppression**

Domestic sales parameters		2003-04	2004-05	2005-06	2006-07
Cost of Sales	Rs/MT	***	***	***	***
Trend	Indexed	100	108	126	142
Selling price	Rs/MT	***	***	***	***
Trend	Indexed	100	114	128	138

### **Post-disclosure comments**

82. KKPC has held the whole injury analysis as flawed, as price under-cutting, under-selling, depression and suppression has been determined for the total volume of goods from the subject countries rather than for each country separately. However, the conditions as per Annexure II (iii) of the AD Rules for cumulative assessment have been met and KKPC's contention is incorrect. Nevertheless, country-wise analysis has also been done.

83. The domestic industry has pointed out huge differences in the volumes and value of exports and imports as per Korean export data and DGCIS import data and expressed inability to understand the calculations of weighted average landed price of imports and reach the landed price of imports determined by the Authority. Here, it is pointed out that the import volumes and values adopted by the Authority for assessing demand and computing the volume and price effects have been based on the exporter's data and are much higher than what the domestic industry had indicated in its petition.

### **G.3 Examination of other Injury Parameters**

84. The Authority has examined the other mandatory economic factors and indices having bearing on the state of the industry as follows:

#### **Other physical parameters of the domestic industry**

### Capacity utilisation and output

Parameter		2003-04	2004-05	2005-06	2006-07
Capacity	MT	8500	9300	9300	10575
	Trend	100	109	109	124
Output/ Production	MT	***	***	***	***
	Trend	100	122	116	124
Capacity utilisation	%	***	***	***	***
	Trend	100	112	106	99

85. The production data of the domestic industry during the injury period reveals that there has been substantial capacity addition, due to de-bottlenecking of the existing capacity and addition of equipment. The production has increased over the injury period in line with the increase in capacity. The domestic industry has submitted that the enhanced capacity was in consonance with the increase in demand but they had been unable to increase production proportionately, in view of inability to increase its sales despite higher demand. Resultantly, the capacity utilization of the company has more or less remained constant over the injury period. However, in the interim period, despite capacity increase, the utilisation percentage improved, but it declined marginally during the POI as compared to previous three accounting years.

### Employment and productivity

Parameters		2003-04	2004-05	2005-06	2006-07
Production	MT	***	***	***	***
No. of employees	Nos.	***	***	***	***
Trend	Indexed	100	95	112	78
Productivity / employee	MT	***	***	***	***
Wages	Rs/Lacs	***	***	***	***
Trend	Indexed	100	112	117	114
Wages/ unit of production	Rs./MT	***	***	***	***
Trend	Indexed	100	92	103	92

86. The productivity per employee has increased over the injury period but more in the POI than in the earlier years. However, improved productivity has not resulted in profitability to the company. Overall however, relative productivity appears to be low. Further, the employment level has declined marginally, but the expenses on account of salary and wages have increased about a factor of 14 due to increase in production. However, the wage cost per unit of production has come down by 8%.

### Inventories

Parameter	Unit	2003-04	2004-05	2005-06	POI
Average stock	Mt	***	***	***	***

Trend	Indexed	100	121	144	221
Average stock in terms of No. of days sales	Nos	***	***	***	***
Trend	Indexed	100	101	134	207

87. Average stock of finished products with the domestic industry showed increase over the injury period and particularly in the POI.

### Financial parameters

#### Profit/loss of the domestic industry

(In Rs.lacs)

Total domestic sales	2003-04	2004-05	2005-06	2006-07
Sales Value	***	***	***	***
Trend (Indexed)	100	137	138	148
Cost of Sales	***	***	***	***
Trend (Indexed)	100	130	136	152
Profit/( Loss)	***	***	***	***
Trend (Indexed)	(100)	59	(71)	(268)
Interest	***	***	***	***
Profit before Interest & Taxes	***	***	***	***
Trend (Indexed)	100	209	160	95

#### Profit /( Loss) per MT

Cost of Sales	***	***	***	***
Trend (Indexed)	100	108	126	142
Selling price	***	***	***	***
Trend (Indexed)	100	114	128	138
Profit/( Loss)	***	***	***	***
Trend (Indexed)	(100)	49	(66)	(251)
Interest	***	***	***	***
Profit before Interest & Taxes	***	***	***	***
Trend (Indexed)	100	174	149	89

88. The examination of these tables reveals that though the sales revenue of the domestic industry from its domestic operations of the product under consideration has improved due to increase in domestic production and sales, the domestic industry continued to suffer loss from its domestic operations except in 2004-05, as the net sales realisation has not gone up in proportion to the increase in cost of sales. Whereas the cost of sales has gone up by 42%, the net sales realisation has gone up only by 38%. The profit before interest and taxes though positive, has declined over the injury period.

### Return on investments and ability to raise capital investment

Particulars	Unit	2003-04	2004-05	2005-06	2006-07
Profit before interest & tax	Rs./Lacs	***	***	***	***
Trend	Indexed	100	209	160	95
Capital Employed (NFA)	Rs./Lacs	***	***	***	***
Return on capital employed	%	***	***	***	***
Trend	Indexed	100	177	131	62

89. The return on capital employed has declined in the POI compared to the base year and previous years and as a result, the ability of the company to raise capital investment has also come down.

### Cash Flow

		2003-04	2004-05	2005-06	2006-07
Sales - Domestic	MT	***	***	***	***
Profit/ (Loss)	Rs./Lacs	***	***	***	***
Depreciation	Rs./Lacs	***	***	***	***
Cash Profit	Rs./Lacs	***	***	***	***
Trend	Index	100	939	249	(728)

90. The cash profits have declined significantly during POI as compared to last three years.

### Growth

91. It is noted from the examination of the economic parameters that company has shown improvement in production and sales volume as a result of increase in capacity. Both selling price as well as cost of sales has also shown increase over the injury period but increase in selling prices were less than the increase in costs and that have resulted in Price suppression. Profits, cash flow and return on investment have shown a negative growth during POI.

#### vi) Magnitude of Dumping

92. Magnitude of dumping as an indicator of the extent to which the dumped imports can injure the domestic industry has been presented in para 55.

#### vii) Factors affecting domestic prices

93. Change in cost structure if any, competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market. The Authority notes that landed value of imported material from subject countries is below the selling price of the domestic industry, causing price undercutting in the Indian market. The Authority

also notes that there is no viable substitute to this product and the erstwhile Apar Industries was the sole producer of the subject good in India and therefore, domestic competition does not affect the prices.

94. The Authority also notes that dumped imports from several sources competing with each other and with the domestic products are simultaneously affecting the domestic market for which cumulative injury analysis has been done. It is also noted that there is a healthy demand of the product in the domestic market.

95. Acrylonitrile and Butadiene are two principal monomers for production of NBR. Prices of both have increased worldwide, resulting in increase in the cost of production for the domestic industry over the injury period. However, the selling prices of the domestic industry did not increase to the extent of the increase in cost.

#### G.4 **OTHER KNOWN FACTORS AND CAUSAL LINK**

96. The exporter have argued that since imports are taking place from several countries already attracting duty, the effect of these imports should be examined and injury should not be attributed to the imports from Korea. The Authority has cumulatively examined the volume and price effects of all dumped imports for the purpose of injury analysis as the dumped imports are simultaneously entering the Indian market from several sources and the non-attribution factors as per the Agreement as follows:

i) Volume and prices of imports from other sources

97. During the POI, other than the subject countries, imports have taken place from several other countries, including Chinese Taipei, European Union (excluding Germany), Brazil and Mexico against which antidumping duty is in force. The data shows dumping from these countries too. Therefore, imports from all dumped sources have been examined cumulatively to analyse the effect of dumped imports on the domestic industry.

ii) Contraction in demand and / or change in pattern of consumption

98. Total domestic demand of the product under consideration has shown a very significant increase by about 60% during the POI compared to the base year. There is no significant change in consumption pattern of the product in the domestic market, which can be attributed to the injury to the domestic industry.

iii) Trade restrictive practices of and competition between the foreign and domestic producers

99. The subject goods are freely importable and there are no trade restrictive practices in the domestic market, as there has been only one domestic producer. Imports of the subject goods take place from several countries, which compete with the domestic

producer, a major portion of the imports having been determined as dumped imports. Therefore, the Authority notes that the domestic producer is facing unfair competition from several countries including the subject countries and the current injury to the domestic industry cannot therefore, be attributed to trade restrictive practices or fair competition between foreign and domestic producers.

iv) Development of technology and export performance

100. Development of technology or inefficient method of production of the domestic industry cannot be treated as a cause of injury to the domestic industry. Further, the Authority also notes that the domestic industry has small export turnover of the subject product though it shows steady growth during the POI. The insignificant export performance does not impact the domestic industry's performance very much.

v) Productivity of the Domestic Industry

101. Productivity of the domestic industry in terms of labour output has shown substantial improvement and hence is not a factor, which can be attributed to the injury of the domestic industry.

#### G.5 MAGNITUDE OF INJURY AND INJURY MARGIN

102. The non-injurious price determined by the Authority has been compared with the landed value of the exports for determination of injury margin. The weighted average landed price of the exports from the subject countries and the injury margins have been found to be significant.

Non-Injurious price		Landed value	Injury Margin	IM %
***	Germany	138579	(***)	(15-25)%
	Korea			
	KKPC	***	***	8-13%
	LGC	***	***	5-10%
	Others	***	***	20-25%
	Total	99647	***	8-13%

#### H. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY

103. Section 9A of the Act requires the Designated Authority, in an expiry review, to examine whether cessation of the duty would lead to continuation or recurrence of dumping and injury.

##### H.1 **Views of the interested parties**

104. The domestic industry has stated that the likelihood of continuation or recurrence of dumping in a sunset review investigation can be established by considering the

evidence of dumping by exporters in third country markets, continued dumping from the subject countries, dumping margins determined in previous investigations, freely disposable present surplus and potential capacity expansions undertaken by foreign producers, actual and potential volume of exports. Various indicators to analyse the likelihood of dumping have been listed, as well as decisions of the CESTAT. The critical question was whether export price from Korea to other third countries were lower than normal value, because if so, the exporter would shift those volumes to India if AD duties are revoked. KKPC argued that third country export price may not be an indicator, as every market is different and can not be compared merely based on FOB prices. Moreover, such analysis was required to be done separately for each third country and not on the basis of a weighted average of third country exports. There should be separate recurrence analysis for individual cooperating exporter/producer and not for exporting country as a whole. LGC has held that they had exported the subject material to other countries at almost similar prices as to India.

105. KKPC has also asserted that despite AD duty, Indian customers were willing to pay for their product, so that there was no likelihood of fall in the export price, even if the duty was removed. The domestic industry has dubbed this as fallacious, as the volume of current exports are restricted due to the duty and would increase substantially if duty was removed, so that the Korean product would become cheaper. Therefore, (a) the domestic industry reduces its prices proportionately, or (b) KKPC increases its export sales volumes due to the price difference, either option leading to intensified injury to the domestic industry.

106. KKPC has declared that their capacity utilization has been over 90% and hence there was no question of surplus capacity. The domestic industry has referred to the information published by the International Institute of Synthetic Rubber Products (IISRP), showing that combined capacity of 80,000 MT in Korea from 50,000 MT in 2005. KKPC has enhanced capacity from 30,000 MT to 50,000 MT, which the industry attributes to the company's eagerness to capture the global market. Despite global installed capacities being in excess of current demand, KKPC has enhanced capacity and also had significant exports to third countries, which would find place in the Indian market if duties are revoked. But KKPC has stated that there has been no increase in their capacity during POI and the preceding two years and that capacity was not meant only for the domestic, but also for the global market. The issue was whether the exports were made at dumped prices. Besides, contrary to the domestic industry's assertion, the acquisition of the NBR unit by EIPL despite alleged injury indicated EIPL's eagerness to dominate the global market. Continuing the argument, KKPC has submitted that despite the reference to global overall surplus capacity, the domestic industry itself has increased capacity, which enhancement, the industry has claimed, was in response to demand.

107. KKPC has further stated that the likelihood analysis and recurrence of dumping should be examined and established separately for every cooperating exporter/producer and cannot be based on country-wide data. Thereafter, recurrence of injury needs to be

examined. The AD duty in existence for the past 10 years has ensured that all price distortions are removed at the customs border. Therefore continued injury suffered by the domestic industry implied that there are other factors responsible for the same. If the domestic industry has not improved their condition, it highlighted their level of inefficiency. KKPC refuted the argument that even when the economic parameters do not show any deterioration, duties can be continued. Similarly, LGC has held that the exporter found not to be dumping cannot be put to AD duty in any investigation whether fresh or review.

108. Post-disclosure, KKPC has stated that a disclosure statement containing a reproduction of the views of the interested parties was a gross violation of Article 6.9 of the AD Agreement requiring the Authority to inform all interested parties of the essential facts under consideration which form the basis for a decision on whether to apply definitive measures as well as violative of the principles of natural justice. Similarly, the domestic industry has alleged that the disclosure statement did not confirm to the present practice of the Authority with regard to disclosure of facts in respect of likelihood of dumping and injury. However, the Authority has disclosed all the facts to the interested parties and only the analysis of the facts have not been communicated.

## **H.2 Examination by the Authority**

109. The Authority analysed the data on likelihood of continuation or recurrence of dumping and injury in the light of the various arguments presented by the interested parties. It was observed that in the current scenario, the volume of the imports from the subject countries recorded a very significant jump in the POI, substantially cutting into the share of the domestic industry in the POI. On the other hand, the Authority also noted that the domestic industry capacity is just about half the domestic demand, so that imports are inevitably required to meet the shortfall. As regards the effect of subject country imports on prices, there is price under-cutting and price suppression, as well as price under selling of 9% in the POI, based on the Supreme Court orders for computing NIP.

110. In assessing the likely scenario, country-wise analysis of import data and rates shows the following highlights:

- ❖ In the case of Korea, the Authority notes that the current dumping margin of the cooperating exporters have been determined to be positive on the basis of a single country specific normal value determined in pursuance to Supreme Court Judgment. Similarly, the current dumping margin for Germany is negative.
- ❖ Imports from Korea RP registered a growth rate of 27% for the period 2003-06 as per Indian import data and 15% as per Korean export data in the WTA. The rate of growth of imports from Germany as per the Indian import data in the WTA for the same period was 13% vis-à-vis a 2% rate of growth in EU exports of NBR to India. In both countries there is evidence of growing imports, not of reduction.

- ❖ On the other hand, the growth in the rate per MT of the product was merely 1% as per Indian import data for Germany compared to 4% for EU export data while that for Korea RP was 10 & 30% respectively for 2003-06.
- ❖ Thus, the import volumes from Korea RP are set to grow while the unit export rates to India have consistently remained lower than the export rate to other countries.

111. The possibility of continued imports from Korea RP has also been examined in the light of the data provided by the exporters.

- ❖ Looking at the capacity and its utilization levels, it is noted that in the case of both KKPC and LGC capacity utilization have been higher than 100% in 2006, implying the possibility of capacity expansion given the rising export volumes. There are also reports of LGC's and KKPC's planned capacity expansion in the press.
- ❖ Total sales have remained close to production levels or exceeded them, particularly in the POI, which again supports the possibility of capacity expansion.

112. It is also a fact that despite antidumping duty in place for 10 years, the imports from Korea have not shown any decline. On the contrary, as KKPC has itself admitted, the quantities exported by them to India have consistently remained at about 30% of total demand in the country. Demand itself has been growing rapidly during the injury period.

113. As regards imports from Germany although the volumes are small, this could be on account of antidumping duty already in place. Antidumping duty has been levied not only on import from that country but also on imports from the entire EU region.

114. The attractiveness of the Indian market in view of the relatively high growth rates of the economy, the high growth rate of the auto and footwear sectors, would serve as a magnet for any excess availability of the product in any of these countries, particularly if combined with marginally lower unit import rate vis-à-vis the domestic selling price. Therefore, the Authority feels that revoking antidumping duty from Korea RP would lead to large scale imports.

115. As regards the continuation or recurrence of injury to the domestic industry the Authority has considered the price level at which the goods are entering the Indian market from the subject countries in spite of the duty in place. There is significant price under-cutting and price under-selling by the Korean exporters, while these are negative in

the case of imports from Germany. Therefore, the Authority concludes that the present situation would change for the worse if the duty is revoked from Korea.

On the other hand, the volume and price effect of German imports is either negligible or negative. It is also seen that capacity of Germany is low and they have been exporting small quantity during the period when anti dumping duty was imposed. Germany has also been exporting at a price higher than the domestic selling price. In view of this behaviour by the exporters from Germany, the Authority does not see a likelihood of exports of the product under consideration taking place at dumped prices into India. It is also seen that in the POI there is negative dumping and injury margins on account of exports of NBR from Germany to India.

## **I. CONCLUSIONS**

116. After examining the issues raised and submissions made by the interested parties and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- ❖ Germany: In view of the position indicated in Para 115, the Authority does not see any reason for continuation of existing anti dumping measures on exports of NBR from Germany into India.
  
- ❖ Korea RP: The Authority notes that both KKPC and LG have been exporting substantial quantities of NBR to India even during the existence of anti dumping duty and have proposals to create reasonably high additional capacities in the near future. In view of the proposed additional capacities of both KKPC and LG, the authority concludes that there is a strong likelihood of exports into India continuing at dumped prices leading to consequential injury to the domestic industry. Injury to domestic industry is likely to continue or recur if the duties are either revoked or reduced in respect of imports from Korea.
  
- ❖ The domestic industry continues to suffer material injury on account of low per unit realization due to the price effect of dumped imports and erosion of its market share;

## **J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

117. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general

interest of the country. Continuation of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

**K. RECOMMENDATIONS**

118. Having concluded that the domestic industry continues to suffer material injury on account of dumped imports from Korea RP and there is likelihood of continuation of dumping and injury on account of imports from Korea RP if the duties are revoked, the Authority is of the opinion that continuation of the measure is required against imports from Korea. The Authority therefore recommends continuation of the existing duty (as notified vide customs Notification no. 78/2005- Customs dated 01.09.2005 and as amended vide notification no. 11/2007- Customs dated 31.01.2007) in respect of both cooperative and non cooperative exporters from Korea RP as is in place as on date. As LG has also cooperated in the sunset review proceedings, they will be treated at par with another cooperating exporter namely KKPC. Accordingly, the duty recommended is US \$ 38.73 per MT for cooperating exporters namely KKPC and LG and US\$ 362.75 per MT for other non cooperating exporters of Korea RP.

**L. FURTHER PROCEDURES**

119. An appeal against this order shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

120. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party within the time limit stipulated for this purpose.

**(R. Gopalan)**  
Designated Authority